IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.M.JOSEPH

WEDNESDAY, THE 16TH JANUARY 2008 / 26TH POUSHA 1929

OP.No. 6096 of 2003(A)

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PETITIONER:

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N. SUDEVAN, (RETIRED SURVEYOR)
MUTHALACHANVILAKOM, VAKKOM P.O.,
KADAKKAVOOR, SURVEY AND LAND RECORDS
RE-SURVEY OFFICE, ATTINGAL.

BY ADV. SRI.G.SURARSHAN

RESPONDENTS:

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1. STATE OF KERALA REPRESENTED BY
SECRETARY, DEPARTMENT OF REVENUE,
THIRUVANANTHAPURAM.

2. DIRECTOR, SURVEY AND LAND RECORDS,
THIRUVANANTHAPURAM.

BY GOVERNMENT PLEADER SRI. BENJAMIN PAUL.

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 16/01/2008, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

**K.M.JOSEPH, J.**

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O.P. No.6096 of 2003

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Dated this the 16th day of January, 2008

**JUDGMENT**

Petitioner is a retired First Grade Surveyor. He has approached this court for the following reliefs:

> "A. To issue a writ of mandamus or any other appropriate writ, direction or order to the second respondent to issue NLC to the petitioner forthwith.
>
> B. To declare that Ext.P5 is not binding on the petitioner for getting his DCRG and other benefits.
>
> C. Direct the respondent to pay his pensionary benefits ignoring Ext.P3 and Ext.P4.
>
> D. Direct the second respondent to pay the entire arrears of salary to the petitioner in pursuance of Ext.P7 order at the earliest."

2. Regarding the issuance of NLC, it is stated stated in the writ petition that a letter stating that an amount of Rs.60,630/- is pending against the loan taken by the petitioner from Vakkom Farmers Service Co-operative Bank vide Ext.P5. According to the petitioner, petitioner is only a surety to the transaction and it is his case that he is not liable to the department or Government and hence no valid ground for non-issuance of NLC to the petitioner.

3. In paragraph 7 of the counter affidavit it is stated as follows:

> "It is submitted that the Liability Certificate as per the above authorisation was sent to the Sub Treasury, Attingal on 12.11.2003 for disbursing DCRG to the petitioner without recovering the co-operative dues."

4. Further prayer of the petitioner is for payment of arrears. According to him the matter is covered in his favour by the decision of a learned Single Judge as confirmed in W.A. 439 of 2004. I note that the prayer of the petitioner is for mandamus. A writ of mandamus cannot be sought without there being a demand and refusal. There is no representation filed or produced by the petitioner, though petitioner relies on Ext.P7. Petitioner has not produced any evidence of any representation. In such circumstances, I do not think that the petitioner can be given the relief of mandamus. But I make it clear that it is open to the petitioner to file a representation before the second respondent claiming the benefit of Ext.P7 Circular. I leave open that right of the petitioner.

5. In regard to the prayer for fixation, in the counter affidavit it is stated as follows:

> "It is respectfully submitted that the petitioner retired from service on 31.5.2001 as FGS from the office of

Superintendent (RS), Attingal. He had submitted his formal application for pensionary benefits through the Superintendent, (RS), Attingal on 15.1.2001. He ought to have applied for his pension one year before his date of retirement, which the petitioner had not done. The respondent forwarded the pension proposal to the Accountant General, Thiruvananthapuram for authorisation of pension on 9.8.2001. The Accountant General authorised the pensionary benefits as per No.PR7/PenA/112/JJ/01-02/414 dated 28.6.2001. This was based on the fixation of pay int he qualified scale of pay.

The department erroneously exempted those persons who attained the age of 50 years and 25 years of service from passing the department test and granted them time bound Higher Grade promotion. As a result those persons who got fixation in the qualified scale of pay for which they are not eligible for.

As per Government Circular No.10267/Rules/01/87/P& ARD dated 9.11.1987 he was eligible only for the scale of pay Rs.5800-9425/- only. When action was initiated to refix the pay, similarly affected persons approached the Hon'ble High Court against the above action as per O.P. No.23488/00. The said OP was disposed of by the Hon'ble Court on 7.3.2002 directing the department to regulate the status of similarly affected persons.

In accordance with the direction contained in the common judgment in O.P. No.23488/00 dated 7.3.2002 steps were taken by the 2nd respondent who requested the Superintendent of Survey & Land Records (RS), Attingal as per Ext.P3 to refix the

pay of the petitioner. The SSLR, (RS), Attingal forwarded the revised pension proposal which was later forwarded to the Accountant General, Thiruvananthapuram as per Ext.P4. There upon the petitioner approached the Hon'ble High Court in O.P. 6096/2003.

In accordance with the directions contained in the common judgment in O.P. No.23488/00 dated 7.3.2002 the respondents forwarded the revised pension proposal to the Accountant General, Thiruvananthapuram for authorisation of revised pension on 11.2.2002. The Accountant General authorised the revised pensionary benefits as per No.PR7/Rev/235/jj/02-03/1422 dated 24.3.2003. This was based on the revised fixation of pay in the unqualified scale of pay."

There is no reply affidavit filed. I do not think that the petitioner can be granted any relief on the above score.

The Original Petition is disposed of as above.

(K.M. JOSEPH, JUDGE)

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**K.M. JOSEPH, J.**

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O.P. 6096 OF 2003

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**JUDGMENT**

16.1.2008.